

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3756 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GANSHYAMKUMAR GORDHANDAS BOSAMIA & ORS

Versus

STATE OF GUJARAT & ANR

Appearance:

Shri K.S. Nanavati, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/04/96

ORAL JUDGEMENT

The order passed by the Deputy Secretary to the
Government of Gujarat, Revenue Department (respondent No.
2 herein) on behalf of the State Government (respondent
No. 1 herein) on 30th January 1984 under sec. 34 of the
Urban Land (Ceiling and Regulation) Act, 1976 (the Act
for brief) is under challenge in this petition under

articles 226 and 227 of the Constitution of India. By the impugned order, respondent No. 1 set aside the order passed by the Competent Authority on 6th November 1982 granting permission to petitioner No. 9 to sell two parcels of land from lands bearing Survey Nos. 320 and 391 situated at Vejalpur within the urban agglomeration of Ahmedabad under sec. 27 of the Act.

2. The facts giving rise to this petition move in a narrow compass. The lands bearing survey Nos. 320 and 391 belonged to petitioner No. 9. He was holding other lands also within the urban agglomeration of Ahmedabad. He filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Ahmedabad. Thereafter he applied for permission under sec. 27 of the Act to sell to petitioners Nos. 1 to 8 some area in all admeasuring 5974 square meters from the aforesaid two parcels of land bearing survey Nos. 320 and 391. By his order passed on 6th November 1982 under sec. 27 of the Act, the Competent Authority at Ahmedabad granted such permission on certain terms and conditions. Its copy is at Annexure E to this petition. It may be noted that the area sold by petitioner No. 9 to petitioners Nos. 1 to 8 had construction upto the plinth level to the tune of 1500 square yards in survey No. 391 and 1005 square yards in survey No. 320. It appears that the permission at Annexure E to this petition came to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 34 was therefore contemplated. A show-cause notice thereupon came to be issued on 15th January 1983 calling upon the petitioners herein to show cause why the aforesaid permission at Annexure E to this petition should not be revised. Its copy is at Annexure F to this petition. Petitioner No. 9 filed his reply thereto. Its copy is at Annexure G to this petition. By the order passed by and on behalf of respondent No. 1 on 30th January 1984 under sec. 34 of the Act, respondent No. 1 set aside the order granting permission at Annexure E to this petition. Its copy is at Annexure H to this petition. Thereafter the declaration in the prescribed form filled in by petitioner No. 9 was processed by the Competent Authority. By his order passed on 15th May 1984 under sec. 8(4) of the Act, the Competent Authority declared the holding of petitioner No. 9 to be in excess of the ceiling limit by 9382 square meters. Its copy is at Annexure I to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for

questioning the correctness of the order passed by and on behalf of respondent No. 1 on 30th January 1984 at Annexure H to this petition and the order passed by the Competent Authority on 15th May 1984 at Annexure I to this petition.

3. It transpires from the impugned order at Annexure H to this petition that the permission under sec. 27 of the Act was cancelled only on the ground that there was no material on record to show that the area sold by petitioner No. 9 to petitioners Nos. 1 to 8 had any construction therein on the date of coming into force of the Act. This finding recorded by and on behalf of respondent No. 1 in the impugned order at Annexure H to this petition is challenged by and on behalf of the petitioners on the ground that it is perverse.

4. Learned Advocate Shri Nanavati for the petitioner has invited my attention to various documents in this petition showing that the plinth level construction was in existence in the subject-matter of the permission at Annexure E to this petition prior to coming into force of the Act. Learned Advocate Shri Nanavati for the petitioners states that the materials produced at Annexure I to this petition were produced before respondent No. 1 in support of the reply to the show-cause notice at Annexure G to this petition.

5. The petitioners have produced at Annexure B to this petition a copy of the building permission granted by and on behalf of the gram panchayat of Jodhpur on 15th January 1975 for construction on the subject-matter of the permission at Annexure E to this petition. That permission was in the name of petitioner No. 9 That permission was granted in accordance with the plans submitted. That building permission was certainly prior to coming into force of the Act. A copy of the agreement to sell executed between the parties on 11th July 1975 is at Annexure D to this petition. It is clearly mentioned therein that the sale of the land in question by petitioner No. 9 to petitioners Nos. 1 to 8 was with the existing plinth level construction raised thereon. It thus becomes clear that the plinth level construction existed on the subject-matter of the permission at Annexure E to this petition on the date of the sale agreement at Annexure D to this petition. The sale agreement was executed between the parties prior to coming into force of the Act. It transpires from the permission at Annexure E to this petition that its subject-matter had some construction thereon as transpiring from the annexure thereto. The petitioners

have produced at Annexure C (collectively) to this petition receipts showing that the construction was subject to house tax by the gram panchayat at Jodhpur from Assessment Year 1975-76. With the additional affidavit the petitioners have also produced receipts regarding payment of house tax to the gram panchayat with respect to the constructed area from the Assessment Year 1975-76. It is unfortunate that despite this material on record, respondent No. 1 has reached a contrary finding that there existed no construction in the subject-matter of the permission at Annexure E to this petition. That finding is obviously contrary to the material on record. It has to be styled as perverse. Such perverse finding would not bind this Court in exercise of its jurisdiction inter alia under art. 226 of the Constitution of India.

6. It is true that the construction in the subject-matter of the permission at Annexure E to this petition on the date of coming into force of the Act was only upto the plinth level. The very fact that it was assessed to house tax by the concerned gram panchayat would go to show that it was treated as a building for the purpose. That is one more reason why it should be treated as the constructed area in existence prior to coming into force of the Act.

7. Learned Advocate Shri Nanavati for the petitioners has invited my attention to the definition of the "vacant land" contained in sec. 2(q) of the Act. It has inter alia been specified therein that the expression "vacant land" would not include inter alia a building which is being constructed on the appointed day with the approval of the appropriate authority and the land appurtenant to such building in an area where there are building regulations. It has inter alia been provided therein that where there are no building regulations the land occupied by any building which is inter alia being constructed on the appointed day and the land appurtenant to such building will not be included in "vacant land". As transpiring from the building permission at Annexure B to this petition, it was granted after approval of the plans submitted for the purpose. As aforesaid, it was granted by the gram panchayat of Jodhpur. It cannot be gainsaid that the concerned gram panchayat would be a local authority. The tenor of the building permission at Annexure B to this petition would clearly go to show that it would be in accordance with the building regulations in that regard as it is mentioned that the building permission was granted and the building was to be constructed in accordance with the plans submitted and approved. Such permission could be given only in

accordance with the building regulations. It is not the case of the respondents or either of them that the building permission at Annexure B to this petition was not in accordance with the building regulations in force at the relevant time.

7. Even otherwise, clause (iii) in sec. 2(q) of the Act would take care of the situation even if it is held that there were in existence no building regulations at the relevant time. By virtue of the aforesaid statutory provision, the area covered by the building together with the land appurtenant thereto will not be included in the expression "vacant land".

8. Since it has been provided that the building which is being constructed on together with the land appurtenant thereto will not be included in "vacant land" as referred to in clause (ii) or clause (iii), there is no hesitation in coming to the conclusion that the constructed area upto the plinth level will be included in the word 'building' occurring therein. It may be mentioned that the word "building" has not been defined anywhere in the Act. However, in the context of clauses (ii) and (iii) occurring in sec. 2 (q) of the Act, the building which is in the process of construction will have also to be regarded as building for the purposes of sec. 2(q) of the Act. It cannot be gainsaid that reaching upto the plinth level with respect to a building would be in the process of construction carried out on a piece of land. When a property is constructed upto the plinth level, it can safely be said that the building is being constructed on the land in question. In that view of the matter, the construction upto the plinth level will have also to be held to be building for the purposes of sec. 2(q) of the Act. The word building occurring in sec. 27 of the Act will have therefore to be construed accordingly. It would include construction upto the plinth level.

9. In view of my aforesaid discussion, I am of the opinion that respondent No. 1 was not justified in coming to the conclusion that there existed no construction on the subject-matter of the permission at Annexure E to this petition on the date of coming into force of the Act. Setting aside the permission under sec. 27 of the Act at Annexure E to this petition on that ground cannot therefore be sustained in law. The impugned order at Annexure H to this petition therefore deserves to be quashed and set aside.

10. It transpires from the impugned order at Annexure

I to this petition that the area of the subject-matter of the permission at Annexure E to this petition is included in the holding of petitioner No. 9 only on the ground that the permission at Annexure E to this petition was cancelled by and on behalf of respondent No. 1 by the order at Annexure H to this petition. Since the order at Annexure H to this petition is found to be not sustainable in law and since it deserves to be quashed and set aside, the matter will have to be remanded to the Competent Authority at Ahmedabad after setting aside the impugned order at Annexure I to this petition. The Competent Authority at Ahmedabad will keep in mind the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567 for exclusion of the constructed property together with the land appurtenant thereto from the holding of the land-holder. The impugned order at Annexure I to this petition will have therefore to be set aside for the purpose.

11. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 30th January 1984 at Annexure H to this petition is quashed and set aside. The order passed by the Competent Authority at Ahmedabad on 15th May 1984 at Annexure I to this petition is also quashed and set aside. The matter, so far as the order at Annexure I to this petition is concerned, is remanded to the Competent Authority at Ahmedabad for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
